

**CONSERVATION COMMISSION MEETING
AMESBURY CITY HALL AUDITORIUM, 62 FRIEND STREET
MONDAY, March 2, 2015 @ 6:30 P.M.
Meeting started at 6:35 P.M.**

Present:Kinsey Boehl (acting chair), Alan Corey, Michael Bik

Absent: Steve Langlois

Also Present: John Lopez, Agent; Paul Bibaud, Recording Secretary

MINUTES: Nov. 3, 2014: Motion by Michael Bik to approve, seconded by Alan Corey. AIF.

Dec. 1, 2014: Motion by Michael Bik to approve, seconded by Alan Corey. AIF.

Jan. 5, 2015: Motion by Michael Bik to approve, seconded by Alan Corey. AIF.

ADMINISTRATIVE:

Whittier Bridge Snow Removal:

John Lopez: Snow was being removed and dumped into the river, which is a violation. DEP issued a number of policy guidelines, like an emergency declaration, concerning the removal of snow due to the many recent snow events. The commission received an electronic version of the declaration, authorizing ConComs to consider allowing the dumping of clean snow in open water. Stipulations were: snow could not be placed in a marsh, fresh water, salt water, not placed on shellfish beds, and open (ice-free) waters. Guidelines require an applicant / candidate to notify the DEP that they were intending to notify the local ConCom and ask permission for open water disposal. One day last week, work crews at the Whittier Bridge were observed with heavy machinery, dumping snow directly into the river. I contacted DEP to see if they had received notification from the applicant (MassDOT or their contractor, Walsh Construction). We did not get any request to dump snow. DEP did not, so that constitutes a violation of the emergency declaration. So the issue was then furthered with discussions with Dot. DOT did then notify the DEP and notified myself, and I reviewed their request, which was based upon safety issues. They confirmed that upland disposal areas had reached capacity, although that was never confirmed, they simply said they had no place to put the snow, and a conversation with the Coast Guard concerning the disposal of snow in a navigable waterway. All the concerns were addressed and I felt comfortable issuing a temporary approval of their request, meaning snow could be disposed of in open water. If any ice appeared, then all operations would cease. The approval is to terminate tomorrow at 4 PM, and only snow relevant to the last snowfall was to be included in this. DOT confirmed that they contacted the contractor, Walsh Construction, and notified them immediately to stop any further snow removal. A subsequent site visit during the day showed that they were still snow removal taking place in the river by hand, not by heavy machinery. So the question for the commission is this: would you like the applicant and contractor to appear before ConCom so the ConCom can advise them that this was in violation of protocol; would ConCom like to issue an Enforcement Order: would ConCom just want to write a letter to

the relevant individuals informing them that this should have come before the ConCom, none of the above or all of the above.

Michael Bik: My opinion is that they should appear before us, then we can decide what to do.

Alan Corey: What is your opinion, John?

John Lopez: This was a violation. At the very least, they should be held accountable, answer questions that this commission has before them, then at that time, ConCom can decide whether to pursue an Enforcement Order with fines. According to DEP, I did not have to issue an emergency cert. All I had to do was forward an e-mail to the applicant stating that, pursuant to the snow removal policy, your request for open water disposal is approved, then I stipulated snow has to be clean and all snow has to be disposed of in open water and it will terminate tomorrow at 4 PM.

Motion to have John draft an Enforcement Order letter to the applicant and their contractor to appear before ConCom at the April 6 meeting to address issues relevant to the snow removal violation of DEPs emergency snow removal guidelines was made by Michael Bik and was seconded by Alan Corey. AIF.

Order of Conditions initially issued for denying work at location 37 Middle Road:

John Lopez: This was a subdivision that was ultimately overturned through the judiciary. A superceding order of conditions was issued by DEP. The Amesbury ConCom in 2009 issued a superceding order relevant to the local. So we have two sets of plans working in concert. There was consistency. The ConCom did not stipulate in the Order of Conditions that an environmental monitor would be assigned. However, the PLB did require an environmental monitor. Unfortunately, that environmental monitor cannot officially act in a manner consistent with the wetlands regulations and the ordinance. They're not working for the ConCom. The ConCom didn't designate or require one. However, the PLB monitor did notify me that a violation had occurred, specifically the grading over and filling in of an isolated vegetated wetland, which is relevant only to the local ordinance and not the state. I met with the PLBs monitor just as he was conducting one of his routine site visits, to get an idea as to where this isolated vegetated wetland was. Also in attendance was the applicant's field representative. We discussed the issue, the field representative essentially told me everything that I wanted to hear. This was mid-November. I was told that there would be some movement taking place concerning a draft restoration plan and that I'd have that on my desk by December for the commission to review. The December meeting came and went, the January meeting came and went. Prior to that, the applicant contacted me and wanted to meet. I met with him, reviewed the issue, and the applicant told me that he would contact a consultant. He mentioned Hughes Environmental, but I have not heard from them as to whether or not they were retained. I received nothing.

Tom Hughes, Hughes Environmental Consulting (in audience): The gentleman did reach out to me. I was the conservation agent for the city at the time of the first NOI. I have to determine whether or not the superceding order represents a different matter and the enforcement action a different matter that would not preclude me from working with the applicant. I'm doing that now, which is why I haven't contacted you, because if I am

unable to represent the applicant, I can't call you to talk to you about it. But the applicant has tried to get something lined up.

John Lopez: Having said that, we didn't have a Feb. meeting due to snow storms. No documents or restoration plan draft was received. In my opinion, clearly the applicant needs motivation. There is nothing to serve as a better motivator than a cease and desist order requiring a restoration plan be submitted by whatever date the ConCom chooses as appropriate for further deliberations.

Kinsey Boehl: What is the project, what are they building?

John Lopez: It's a subdivision at 37 Middle Road. An enforcement order would have to be issued in order to allow for the restoration work to occur, that work not being included in the original approval for the project. The size of the isolated vegetated wetland is rather small, but that is up to the applicant to provide us with that information / documentation...at which time the ConCom could also deliberate on fines based on the size of the wetland. For now, I ask ConCom to support the issuance of an Enforcement Order requiring a restoration plan. Our next meeting is April 6. So if we said sometime by March 16, for example (deadline for Apr. 6 meeting)...if we said by March 16, the violator will have to supply us with a signed contract that he has retained an environmental consultant. Fines would occur during this period for missing deadlines.

Kinsey Boehl: It sounds like if we want to get some movement and action from the violator, we could issue a stop work order on them through the enforcement Order.

John Lopez: That's correct, and I'd ask for a Cease and Desist order, with a copy of the contract submitted to the commission by March 16, and this issue would be continued to the April 6 meeting for further proceedings consistent with the enforcement order.

Motion was made by Alan Corey that we issue a Cease and Desist order pending a signed contract submitted to this commission by March 16 for the April 6 meeting. Motion was seconded by Michael Bik. AIF.

Appeal on Negative Determination of Applicability for 13 Merrill street (van der Visser)

John Lopez: This was a proposed wetlands delineation that appeared before the ConCom at the Jan. meeting. The ConCom elected to vote that the proposed wetland line was not accurate, and that an existing order of resource area delineation was still valid for what appears to be the same location. The ConCom denied a rule that the proposed wetlands delineation was not accurate, and closed the issue. The property owner has since submitted an appeal to DEP. I anticipate having a ruling from them by the April 6 meeting. There is no further action warranted on this matter at this time.

Appeal on Negative Determination of Applicability – 68 Lake Attitash Road (Dow)

John Lopez: This is an appeal on an approved project to remove five trees along with an associated installation of sixty six plants to serve as mitigation. Also, the approved project consists of the repair of an existing stone wall, and storm water runoff improvements consistent with recommendations of the Lake Attitash Association. The applicant had appealed the initial decision that this commission approved the project. The applicant has now appealed DEPs upholding of that decision. That decision is now headed to DEPs office of dispute resolution. A conference call has been scheduled for March 10, to see if the two parties can reach agreement. If history repeats itself and they

don't, then DEP senior counsel and the appellant will submit filings and testimony. The presiding court officer will then decide whether or not this warrants a trial or whether to dismiss. No further action is warranted at this time. Also, I let it be known that in the initial proceedings, that this commission supports the findings of DEP and that it defers all further proceedings and testimony to senior counsel for DEP.

**Appeal on Ma DEP Negative Determination of Applicability-
70 Lake Attitash Road (Dow)**

John Lopez: This is two houses over, this is an approved project for the removal of two trees (mature pine trees). The appellant has appealed this decision, claiming that they will experience an economic loss, and that the project will only serve to accelerate erosion into Lake Attitash. DEP denied the appeal based upon the Wetlands Protection Act, stating that the appellant does not meet the definition of an abutter, and does not meet the definition of an aggrieved person. The appellant has appealed that decision, so that is the real issue behind it: whether or not the appellant meets the criteria to actually appeal the decision. A pre-trial hearing was held approximately one month ago. At that hearing, I stated that this commission supports the findings of DEP, and that all further proceedings will be deferred to DEP senior counsel. We really have no further involvement in this, it is between the appellant and DEP. This was just brought to your attention as a briefing.

Enforcement Order- 56 South Hunt Road (Tough Mudder Incorporated)

John Lopez: This is an enforcement order issued to Tough Mudder Incorporated, pursuant to unauthorized actions within a jurisdictional area to the Wetlands Protection Act and to the Amesbury Wetlands Ordinance. Thankfully, the Tough Mudder's representative is here to address the commission.

Ann Martin, with LEC Environmental Consultants, representing Tough Mudder: We were here at your December hearing, presented the results of our finding of our field work, as far as the enforcement went. At that time, the commission authorized us to put together a plan to backfill / dewater the excavations through materials submitted directly to John, and you authorized him to approve those so we could proceed forward. The property owner had a concern about safety and wanted that done asap. We didn't want to wait for another hearing. John promptly approved what we put together, and in the middle of January, before all the snow came, on Jan. 19 and 20, I was out there and the contractor came out and did a very good job dewatering and backfilling the excavations. I submitted e-mails on both days, along with photographs for John, telling him how the process went and documented the process. At the hearing in December, the ConCom also established that I needed to submit a report to you for the remainder of the restoration, which is what we're here for tonight. On January 12, we submitted a report outlining what we were going to do, and it includes a map much like our first map from December's meeting. What remains to be done now, the field has been restored, now is to recreate the intermittent stream channels that connect the hillside seeps to the excavated ditch that is down gradient of the field. We're proposing to do that in the spring. We'll use GPS to locate those channels which you may recall, we evaluated where they were based on historical aerial information. We'll either use flags or spray paint to mark those. The contractor will use a mini- excavator to create those channels along with some side casts. For material we'll use hand rakes and shovels to smooth it out. Then we'll seed the

area with a seed mix, with an erosion control restoration seed mix. We'll seed not only the channels but the entire footprint of the field that was altered, which is about 16,000 square feet. Pretty simple and straight forward, we just need all this snow to melt. We're asking that you approve this so we can get it cued up to be done this spring.

John Lopez: So we're here tonight to modify the Enforcement Order to allow for the implementation of the approved restoration plan. You'll see a draft enforcement order was provided to the commission, and on page two, you'll see a nice description, and I've coordinated this with Ms. Martin so all the dates are realistic, so we don't have to come back and modify the enforcement order. The final phase of the restoration will be completed by June 30, 2015. The final report will be submitted for review and approval by the commission. The final report shall be submitted no later than July 2, 2015 for discussion at the July 6, 2015 meeting (on page two).

If that is fine, then I would recommend that this be ratified with the amendment being July 6, 2015 (not 2014).

Motion was made by Michael Bik to modify 56 South Hunt Road, Tough Mudder Incorporated, referenced DEP file number EO-2. Motion was seconded by Alan Corey. AIF.

Enforcement Order – 12 South Hunt Road (Amesbury Sports Park)

John Lopez: This is an enforcement order which the commission issued several months ago, requiring a restoration plan be submitted and with the ultimate goal of restoring the damaged bordering vegetated wetlands, etc. This was in support of a road race held off property on various parcels of private property, apparently without the owner's consents, one of those owners being the city of Amesbury. The enforcement order would be modified to EO#3, simply allowing for the implementation of the restoration plan. The commission delegated the authority to me to review the restoration plan and approve the plan. In Dec., there were some minor modifications that I requested. Those were made and we're now ready to implement. The restoration plan also includes a nice time frame. So to keep it simple, just modify the enforcement order allowing for the installation and implementation of the approved restoration plan.

Motion was made by Alan Corey that we accept the modification to the enforcement order for 12 South Hunt Road to order EO#3. Motion was seconded by Michael Bik. AIF.

Enforcement Oder for 92 Lake Attitash Road (Ryan)

Michael Bik recuses himself from this agenda item.

John Lopez: This was an enforcement order issued in October, 2014, for the unauthorized removal of asphalt and repaving of a driveway within the 100 foot buffer zone to Lake Attitash. The enforcement order was issued, time frames were stipulated as benchmarks as to what needed to occur. To date, nothing has occurred. It has been my understanding that Commissioner Boehl contacted the property owner's grandson who was at the initial meeting and said he would help out, as his grandfather (property owner) was leaving for the winter. However, little progress has been made, and time lines have passed, nothing has been done. It's my understanding, based upon a recent conversation I've had with Tom Hughes from Hughes Environmental, that he has been retained by the property owner to draft a restoration plan. He's here tonight to brief ConCom and see how you wish to proceed.

Tom Hughes, Hughes Environmental: I have been retained. The grandson contacted me and I've been retained by the property owner. My understanding is that the grandson tried to help out and tried to fill out the NOI, but got his head spinning and just having trouble with it. He talked to John, who suggested maybe he should hire a professional consultant. He contacted me, so I talked to John about what needs to be done, looked at the enforcement order, and realized that we also need to engage an engineering firm. We enlisted Millenium, the contract is on its way to them today, and we will be to survey the existing conditions, figure out exactly how what was done changed what was there, look at opportunities for mitigating storm water, etc., then come up with a plan to include in the NOI to try to show that things were not made worse or are being made better. The other thing we'll be doing is to work with the city to make sure that appropriate work is done by the city at the interface between the driveway and the road to prevent the runoff from running down over the road, down the driveway and into the lake. We'll look at making sure the offsite water is mitigated, and that if the re-pavement has exacerbated any onsite water, that we try to find a way to mitigate that, perhaps by a stone strip or a rain garden or something. We're committed to do that asap after the great glaciers of 2015 melt.

Kinsey Boehl: Are you proposing a time line?

Tom Hughes: Yes, I'm looking at having the deadline extended out so that we file for the May meeting, if weather conditions have cooperated. If not, we'd ask that you authorize the agent to give us an additional month extension. If we need anything more than that, we'd come back. But I'm confident that if we get the snow melt, I'm confident we should be able to put things together in about three weeks. But we have to arrange for some field work, from survey, do some plan work, then we have to do some engineering work on any mitigation. So it takes time after the snow melt. What I've done to date is everything that can be done while there is still snow cover. So we're working on not just the enforcement situation, my client wants to resolve this and cooperate. We're dealing with an elderly gentleman who is in Florida, and his grandson trying to help out, but is overwhelmed with the process.

John Lopez: We've received nothing, not even a filing fee.

Tom Hughes: I can talk to my client about paying the local filing fee in advance. They want to cooperate. Until snow melts, we cannot provide you with what you need for the NOI.

John Lopez: I think the core of what we're dealing with here is an amended enforcement order, and the commission can modify the enforcement order with dates certain. What those benchmarks might be, that is up to you. You can start with just having proof that Mr. Hughes has been retained, with a copy of a contract. I believe one of the abutters in the audience may be here for this purpose. There was some question as to whether or not the driveway was placed at least partially on an abutting piece of property. Mr. Hughes has alluded to a property survey that needs to be done. That would address that issue, and if it is on someone else's property, for a NOI, the property owner must provide their authorization. If the abutting property owner does not, then ConCom will be faced with requiring the owner of the driveway to remove that portion of the driveway. So that survey is really important.

Beth Sloane, 90 Lake Attitash Road, abutter: We took pictures of the whole process. The property has been surveyed multiple times over the past year. So the survey marks

are there. I have photos of the pre and post that show the 11 foot right-of-way, and the driveway goes over by at least 4 feet into the right-of-way, and gives a straight line shot down to the steps which go down to the lake, but it takes away the green buffer area that was there. Now there is a build up of sediment at the bottom of the steps with the buffer. Now we have the straight shot to the lake.

John Lopez: If this speaker would like to submit those photos for the public record, we can put them into the file, and also I'd like the record to show that Mr. Hughes heard all the comments about sediment transport into the lake. Perhaps he will consider that in his NOI proposal.

Tom Hughes: Back to the timeline, if we get rapid snow melt, the earliest we could file would be for your May meeting, because it would be an April filing deadline. But it is going to take a minimum of 3 weeks to get the survey, then add engineering to the plan, then for me to prepare the narrative and everything. I'd like to keep our feet to the fire and have the deadline be for the May meeting, but maybe give John the ability to extend that one meeting administratively, and anything beyond that we'd have to come back to you on.

Kinsey Boehl: I think, to hold your feet to the fire, we have to consider fining past April 13. That would be incentive.

Tom Hughes: Well, you can't incentivize snow to melt. To do this properly, we need snow melt so we can see the stakes and do our due diligence and all. Doing it in 3 weeks is an awful lot of work. So I'd suggest that I be in regular contact with John with updates,

John Lopez: Perhaps ConCom could require a written report from Mr. Hughes date certain.

Kinsey Boehl: Our next meeting is April 6, that's not going to happen.

Tom Hughes: If we have snow melt by April 6, I could put together an actual timeline of exactly where we are, based on when snow melted. Once snow is melted, things are much more predictable.

John Lopez: So that could be a stipulation of the modified enforcement order. If snow melts by Apr. 6, then the applicant's representative will submit a written timeframe?

Tom Hughes: I'd suggest that at the first meeting after snow melt, we've either filed an NOI or we provided a schedule with milestones for the ConCom's review and approval.

Alan Corey: So you're asking us to amend the enforcement order to amend it so that it says by April 6, you'll come in with a timeline for us, unless there is still too much snow, in which case, you'll come in and ask for another month, and by May 4, you should have things all set for us for the May 4th meeting, which has an April 13 deadline.

John Lopez: I think ConCom should require a written update, so we have a written papertrail on April 6.

Motion was made by Alan Corey to modify the enforcement order to allow that Mr. Hughes will submit an update to ConCom by the April 6 meeting, and that fees will be submitted by the Apr. 6 meeting, and we should see something by the May 4 meeting. Motion was seconded by Kinsey Boehl. AIF

DEP# 002-1095 (MaDEP) Notice of Intervention, 56-58 South Hampton Road

John Lopez: This was in support of an order of conditions that ConCom issued approving a wetland crossing. The DEP felt that the commission failed to uphold the intent of the wetlands protection act, they issued a notice of intervention, they addressed additional engineering information from the applicant, that information was provided. DEP issued a superceding order of conditions dated Jan. 30, 2015, with minor changes to what was approved. I'd say that not substantial or not needing an amended order, just minor modification which benefits the resource. I feel that for briefing purposes, the notice of intervention has been addressed and has been lifted, the superceding order of conditions has been issued. Procedurally, what needs to be done, because it is a minor modification, the applicant has been advised to submit plans to ConCom including those minor modifications. The applicant has done that electronically. The ConCom has received a copy. I responded requesting large scale hard copies for ConCom to enter into the record. So at the April 6 meeting, this issue will be re-addressed as an administrative item, and those modified plans will be entered into the record, and that will suffice. For purposes of the notice of intervention, I think that has exhausted itself. The superceding order has been issued. ConCom administratively will need to approve the modified plans that can be done at the Apr. 6 meeting, and at that point, the project would be back on track pursuant to the superceding order and the order of conditions issued by ConCom. So it has now been rendered to an administrative item. The modification pieces have to do with the detention basin as part of the storm water management plan. It's all ok, it just needs to be approved.

So we'll see this again in April. Nothing needs doing tonight, just to continue this under continued business.

CONTINUED BUSINESS:

DEP #002-1095, Enforcement Order 56-58 South Hampton Road (Couillard).

John Lopez: This was an associated enforcement issue that was issued partially in support of DEPs request. The enforcement order contained a Cease and Desist provision. This was for violations to the act, the applicant allowed work to continue prior to expiration of the ten day appeal period. There was heavy machinery driven through the wetland. The conditions of the enforcement order stated that once a final order of conditions or a superceding order of conditions by the DEP was issued, the conditions of the enforcement order would have been met, exhausted, and the enforcement order will have been lifted. So administratively, I'd like ConCom just to acknowledge the fact that administratively everything has been taken care of, the enforcement order is now void. All conditions have been met.

Alan Corey: So moved. Motion was seconded by Michael Bik. AIF.

Nominate/Elect Commission Secretary- (Amesbury Conservation Commission)

Without Steve Langlois here, we'll address this at the next meeting.

CONTINUED BUSINESS:

**NOI #002-1107 – 56-58 South Hampton Road, Locke Hill Lot 4
(Couillard)**

**NOI #002-1106- 56-58 South Hampton Road, Locke Hill Lot 5
(Couillard)**

**NOI # 002-1105 – 56-58 – South Hampton Road, Locke Hill Lot 6
(Couillard)**

NOI # 002-1104 – 56-58 South Hampton Road, Locke Hill Lot 12 (Couillard)

**NOI #002-1103 – 56-58 South Hampton Road, Locke Hill Lot 13
(Couillard)**

These 5 items taken together:

John Lopez: This is in support of a BSC review dated Sept. 2, 2014, at which time it was forwarded to the applicant. We just received a reply from the applicant's representative addressing the issues raised in the Dec. 2 BSC report. We received that last Friday, well past the meeting deadline. However, that response was forwarded to BSC for subsequent review. We'll wait for the commission's consultant to provide one additional review. So I request that these issues be continued until the Apr. 6 meeting.

Motion by Michael Bik to move these 5 items to the April 6 meeting. Motion was seconded by Alan Corey. AIF.

**NOI #002-1088 – Old Merrill Street (Toth)
Continued to April 6 meeting.**

**NOI #002-1096 – 127 Kimball Road (Scimone)
Continued to April 6 meeting.**

NOI #002-1111- 60 Merrimac Street, Amesbury, Ma. (Smith)

John Lopez: This is about a proposed re-development of a historic mill complex located within riverfront area. The applicant had submitted the proposal. ConCom selected Jillian Davies of BSC to be the commission's consultant. Ms. Davies issued her peer review. The applicant responded to Ms. Davies, and the ConCom has received copies of all of this. The applicant's representative is here to brief ConCom, and the commission's representative, Ms. Davies, is here to address the issues also, along with Mr. Weare, the applicant's representative.

Charlie Weare, civil engineer from Meridian Associates: I have with me the applicant, Larry Smith, and Scott David representing the homeowners association from Hatters Point. The primary thing we've done since meeting with you in Jan. was that we added this area by the access road we've added mitigation for work within the 25 foot no disturb zone with riverfront planting.

Jillian Davies, BSC consultant: The applicant was responsive to a number of items, many of which are already resolved. There are only a few things left. It sounds like they are receptive to substitution plantings, so that was one issue. There are some decisions for the ConCom: the river walk is required by the Chapter 91 license. There is some parking that is down by the river walk. When we talked on the phone, you talked about that you

could reduce that, you could eliminate that. But it is mainly providing access to the river walk and there are, in the ordinance, provisions of recreational and aesthetic values. So I think it is up to ConCom, but I think it is justifiable to keep the parking places there. It is also justifiable to ask them to be removed. So it's a judgement call for ConCom. Then they have removed their proposed rip rap for the steep slope by the access road, and they'll put down some geo-fabric to stabilize the slope, then put in native species plantings. That would be part of the mitigation that would offset the granting of the two waivers that they request. I think the request for waivers in this case is reasonable because similar to other situations where waivers were granted, the resource areas are already disturbed and they are proposing mitigation. Because it is an ordinance situation, there's flexibility as to what is enough mitigation, so I think then the decision on your part would be "is what they've proposed sufficient or do we want to see additional things" or at least discuss things like porous pavement, rain gardens, roof gardens or solar panels, additional mitigation, could that be put in also? Maybe you could address those.

Kinsey Boehl: A lot of the paved areas are subject to flooding. Are there available paving techniques that could be used to slow down runoff and increase detention?

Jillian Davies: If they can do the porous pavement, that would be great, if they feel that is feasible in this situation. Then also, rain gardens would surely help. If the ground is too compacted, then maybe some additional recharge through or captured water with rain gardens would slow the peak flow with rooftop gardens. They would hold the water longer, and you could release it to an area of natural ground, as opposed to a storm water system.

Kinsey Boehl: In the applicant's response, there was some discussion of relocating the building, because of shadows, etc.

Jillian Davies: That was one of the things I asked them to look at, because they pushed the building further back, then they pushed the parking back, moving it all further from the river. They said there is parking on the ground all the way up towards the road, so there wasn't the space that it looked like.

Charlie Weare: This triangular area is actually subterranean parking almost within 15 feet of the street. Because that parking is already there, and then the multi level building is more towards the river. But if we took the building and moved it towards the street, we'd still have the parking below. Its worth noting, now that the new building is aligned with the buildings that are there, so moving it any closer to the road is very difficult. Shadow effects on the neighborhood are a big concern for the abutters and the PLB. We've worked for a year or better resolving those issues. We feel like we've pulled the building as close to the roadway as we could.

Alan Corey: Right now, the water will be sheeting down the road, there is no collection?

Charlie Weare: Correct. That is actually a gravel road constructed in Phase I. it gets used by the marina and the homeowners association for several years.

Alan Corey: What is the feasibility of using porous pavement here?

Charlie Weare: I don't think it is feasible to use porous pavement here. The soil has an organic layer about 5-6 feet down, so in the area of the infiltration system, we did not find that organic layer. I'm afraid there are changeable soils on the site, we've narrowed things into the infiltration basin where we have it and didn't find the organic layer. But as you get into this hill, there is a significant amount of fill on that hill, then backfill it with porous soils, then put in all the other things that go with it. Crushed stone, a choker layer,

etc. The porous pavement is only the top 2-3 inches, but it is all the 2-3 feet of crushed stone, choker layer, wash stone that is really the well. We could do all that, but we'd have to remove a lot of fill already on site, because it is not suitable to support a pervious pavement. So pervious pavement is not something we could take advantage of. It would involve a huge earth moving piece that would not be close to cost effective at all. It's been looked at as an alternative, but it is cost prohibitive. The other alternative was rain gardens. We could incorporate rain gardens. My gut feeling is that it wouldn't be a huge benefit. They'd be very small. You'd capture only a small portion of the roof that would go there. So the benefit would be minimal. I find rain gardens are more applicable into detached housing developments. We could do rain gardens, but I'm not sure you'd get much benefit from two small rain gardens.

Kinsey Boehl: The option of not including visitor parking, what is the ratio of parking spots for residents to residents? Are those visitor parking spots just going to be resident parking spots by default?

Charlie Weare: We're not suggesting that they are visitor spaces. There's two spaces assigned to each unit. The spaces right along the river are spaces specifically for the public, for the purpose of accessing the river walk. All other parking on the site is intended for residents.

Kinsey Boehl: Eventually, people are going to park where they are going to park. If they have multiple vehicles, the residents are pretty likely to use those spaces. What's the control?

Charlie Weare: There will be signage. It'll be a matter of enforcement. We'll talk about suitable enforcement. That'll be an issue with DEP as well. Those parking spaces are within the historically tidal portions of the river. But the area subject to flooding is actually very limited. These spaces will be in support of Chapter 91, public access to the waterfront. That's the only way they can be constructed.

Jillian Davies: We'll be seeing higher levels of flood as time goes on.

Kinsey Boehl: Storm drain markings, are they going to be marked in a way that is obvious?

Charlie Weare: We didn't do that, but we should. Good point. We should stencil and put it on the plan so the commission could condition it. Excellent idea.

John Lopez: Pursuant to the BSC report dated 2-27-15, I understand Ms. Davies briefed the ConCom on the waiver requests, so that has been covered. But one of the issues I really like, that has the potential to be a precedence setting requirement, is to require native, non-hybridized species indicative of the northeast Atlantic. Up until; now, we've done native, non-hybridized wetland species. For our temperate zone, usually from the border to the outer banks of North Carolina, but she's provided a list of species more specific to our region and climate. I think that's a great idea. Maybe include plaques identifying species. It would elevate the site to a higher level.

Charlie Weare: We're committed to doing that. The changes that Jillian suggested are what we're going to incorporate into our final design.

Kinsey Boehl: I'd personally like to see pervious pavement there. The marking of storm drains that say "don't put pollutants in here" so that they don't go into the river.

Charlie Weare: I understand your desire for pervious pavement, but I just don't think it is practical or financially feasible to do it. Would it be helpful if I put that into a narrative, documenting why I don't think it's feasible? If we're talking about it being limited, in

that one area of public parking spaces being pervious pavement, that would be acceptable. That's a limited postage stamp area, and we could do that in the design. But pervious pavement throughout the site is not practical.

Kinsey Boehl: I'd like to see a narrative or justification.

Jillian Davies: I think it would be good to have it documented, because you're documenting your waiver process and it could be referenced in the future. It would show that this was investigated and that it wasn't a site that accommodated some of these things.

Kinsey Boehl: Regarding roof top gardens, you're concerned primarily with the PLB?

Charlie Weare: Yes, with the height issues.

Jillian Weare: John, could you talk to the PLB about that?

John Lopez: Well, this is similar to 42 Birchmeadow, where the applicant stated that they couldn't do certain things because it would require ZBA approval. ConCom wisely said "well, go to ZBA and get an answer from them, yes or no." So I'd say to put the burden of proof upon the applicant. Have the applicant solicit that documentation from the PLB. Maybe the city planner or chairman of the PLB could provide a letter to the ConCom pursuant to that request.

Charlie Weare: This is a little different, since the ZBA is not involved. The PLB controls the height. So we can discuss this with Nipun and see if we can get any traction there, and maybe getting a clarification from Nipun.

Kinsey Boehl: Then the last item would be posting the storm drains, with stenciling.

Charlie Weare: Yes, we'll do that.

John Lopez: So the ConCom would need to endorse the BSC memo dated 2-27-15 and remand to the applicant to do those things or provide a response to ConCom.

Charlie Weare: Yes, we'll have to do the narrative, as mentioned, and then we'd revise our planting plans to conform with what Jillian has come up with. We may need to make a few minor revisions to address the DEP letter, but those would all be done within the next few coming days.

John Lopez: In the ConCom's motion, I would include DEPs comments to get a response. A subsequent final review by Ms. Davies also.

Kinsey Boehl: In summary: We've discussed many items; for April's meeting, the applicant will supply us with a potential plan for limited pervious pavement, a narrative on why a more expanded pervious pavement plan is not feasible, marking of storm water runoff discharge locations, a response to DEP comments with Jillian and BSC's input on any open items if there are any, and the revised planting plan consistent with Jillian Davies /BSC review from 2-27-15.

Motion made by Alan Corey of "so moved." Motion was seconded by Michael Bik. AIF.

Motion to continue the hearing to April 6 was made by Alan Corey and seconded by Michael Bik. AIF.

NEW BUSINESS:

RDA – 92 South Hampton Road (Desmarais)

John Lopez: This is a proposal on behalf of the city of Amesbury to re-establish an existing trail with improvements, consisting of an improved small footbridge wetland crossing essentially within the same footprint. DPW director Rob Desmarais is the applicant. However, the applicant will be represented by Matthew O'Brian, who is the project proponent.

Matt O'Brian, with Boy Scout Troop 4: I'm asking for a negative determination of applicability for an Eagle project that I have planned at Camp Kent. The focus of the project is to re-establish and enhance an existing trail, and to replace an existing footbridge. Erosion blockers will be placed along the trail periodically to minimize any effect on the ecosystem. I plan to carry out the project this spring, when snow melts. The wetland protection act concerns two components of my project. The first being a section of the trail that passes within 100 feet of a low lying area. This is a very small section of the trail and I'd say it is at least 30 feet away from the low lying area that is concerned. The other, as John mentioned, is an existing footbridge that is going to be replaced in the course of my project. The new bridge will be entirely wooden, pressure treated lumber, and between 8 and 10 feet long. It passes over a small body of water that I'd describe as a muddy puddle, but technically it is a perennial stream pursuant to the riverfront act. I expect the project will have a minimal effect on the ecosystem. This is an existing trail that is going to be extended and refurbished, an existing bridge that will be replaced, and similar projects have been done in town, such as the town forest. I expect this project to benefit Camp Kent as well as to the community. The camp does not currently have an extensive usable trail. This could be used for camp programs and also for recreation by the community. No excavating and no heavy equipment. A few posts used as trail markers will be placed in the ground along the trail, but using only a post hole digger for those. All hand dug with no footers needed for the bridge.

John Lopez: A site visit was conducted in November, walking the trail. I observed the Area of the bridge, and replacement is warranted. The current bridge is deteriorated. I think the project as proposed meets the regulations under performance standards, so my recommendation is a negative determination conditioned to the submitted plan and project proposal. At the completion of the project, and I believe it has to be completed by July 31, but will be completed this spring. So when we have our August meeting on Aug. 3 with a deadline of July 13, would you be able to submit a final report to ConCom by July 13, if completed, for the Aug. 3 meeting?

Matt O'Brian: I will do that.

John Lopez: So I would add that as an additional condition.

Matt O'Brian: The type of project is for the purpose of meeting as requirement for Eagle Scout rank to carry out a project that gives back to the community. This is mine.

John Lopez: So this would be a negative determination pursuant to the submitted plans and project narrative. The additional condition would be a final report with photographs submitted by July 13, 2015, to be presented to ConCom at the Aug. 3 ConCom meeting.

So moved motion made by Alan Corey, and seconded by Michael Bik. AIF.

NOI # 002-1114 – 50 Merrimack Street (Boudrow)

John Lopez: This is a proposal for a project on a single family house that is within river front. The project would consist of the removal of some structures, the existing structure along with an associated mitigation plan. The applicant's representative is here.

Bill Deecy, representing the two applicants. With me is Mrs. Boudrow, one of the applicants, and also the architect for the project, Mr. Routier: This is a very dilapidated piece of property. Twice before I have delineated on this property for people who were thinking of doing something on this property, but the house being in such poor shape, they walked away. This time, he intends to stay in and knock down the existing structure and construct a new structure. Currently on the property, between the shed, decks, walkway, existing structure, it's about 1100 square feet occupied. The rest of it is not even a lawn, just a bunch of weeds growing no lawn, then a big slope that goes down towards the river, with a small area of wetlands next to the river, and off to the side, the area that is marked off is not weed in the left hand corner. The wetland at the bottom that you see is very sparsely vegetated scattered around. It might be 40% vegetated. Going further we have the river bank. So we have a lot of resource areas on the property, but the only resource area we are going to be dealing with in this project is the river front. In that area, we propose the new structure having a footprint of 1969 square feet. Along with that, on the street side, we propose paved parking going into a two car garage. On the other side, where there already is some parking, we propose to maintain one parking space here, which will be gravel. The rest is asphalt. In addition, we're adding a patio down in here, along with a retaining wall. There's the very steep slope that I described, and no level area whatsoever around this house or on the property, except down here. So we're proposing retaining wall, and this area in here is going to be filled to this grade, which is the same grade up here by the street, therefore leveled in there, held by a retaining wall. At the base of the retaining wall, I have proposed to add two staggered rows of Juniper, which is about 120 plants or so, and some roses in here. This walkway is all existing. We propose that thus area next to the wall, after the wall is installed, it will all be planted. As part of the notice, I've suggested that this all be replanted with low growing evergreens. It's a good erosion plan and has very good habitat value with birds and rabbits eating the berries. To replace the weeds down in this area, we propose a planting of several species, some buttonbirch, a couple elders, dogwood, etc. after the knot weeds are removed. We're taking this 1100 square foot existing structure and we'll effectively triple the occupancy, which will be up to 3770 square feet, including the patios, the structure, and including all the alterations in this area, some of it for grass, on this side a rain garden to handle the roof runoff for drainage. Effectively, it is all river front. I feel all of this is in compliance.

Mr. Robert Rotier, architect: I've been working with the Boudrows for the better part of 2014. We're coming off of Dec. 2014 ZBA approval process that involved quite a bit of negotiation with the neighbors, and we came away with all the zoning ordinances, variances and findings from that meeting that we needed to do what Bill is proposing for tonight. (speaker then moved away from microphone to hand out paperwork to commission and was inaudible).

John Lopez: As far as “the no mitigation is sufficient to allow structures on a wall type foundation less than 50 feet to a resource area,” I did not see a waiver request form accompanying the NOI, so if the ConCom feels that this is relevant, the applicant simply needs to submit a form (its on our website, I can send it to you tomorrow) just to submit not just the request but why the request is necessary. So if ConCom feels the wall is necessary, then that is easily addressed through the waiver. Now ConCom needs to be waiting for the natural heritage and endangered species act revue to be completed, I’m assuming by April 6 meeting. Is there erosion control located on the site plan?

Bill Deecy: It’s not located, it is mentioned in the narrative, to go six feet off the wall, in relation to the wall. I think the wall can be justified simply for the fact that to allow the runoff drainage off the property, to allow it to go into the ground, if we didn’t have the wall, we don’t have any rain garden. If you look at the contours, it’d run off to the street.

Kinsey Boehl: Do you have anything in the narrative about a monitoring plan, or is that something that we just handle in the Order of Conditions?

Bill Deecy: It would be in the Order of Conditions.

John Lopez: The standard is a two year monitoring plan.

To review, the site plan has been changed to reflect the increased number of plantings. I would request that the narrative be amended to request that. If you amend the narrative, I simply say “project approved”, I simply say “see appendix 1” and I put your exact narrative in appendix 1. I think it would be prudent to continue this to April 6 for the natural heritage review and the endangered species review to be completed along with the waiver. I can draft a draft order in the meantime, and have it ready for the ConCom’s review at the April meeting.

Motion was made by Alan Corey to continue NOI 002-1114 to the April 6 meeting, with the amended narrative to plantings to show 15 with the waiver to be included in the OoC by John Lopez, and waiting for national heritage and endangered species reviews to be completed and available. Motion was seconded by Michael Bik. AIF.

NOI #002-1112, 2 Pine Street (Haight)

Lindsey and George Haight, property owners: We are here to review our NOI application for a 16 X 22 foot two story addition to the west side of our house. It falls 77 feet from the delineated vegetated wetlands. We presented at the Jan. meeting under an abbreviated NOI. We since withdrew that application and re-submitted, at the city’s request, the appropriate NOI Form III.

Michael Bik: Myself and Steve Langlois had done a site visit there. From what we have seen, there wasn’t any concerns of moving forward with the project that they have proposed. My concern was with a lot of the water from the river that is happening down there on your property. I don’t know how that is going to be fulfilled, because I think it is more than just your problem that you have to deal with. I think it’s a city problem, too.

Lindsey Haight: So you’re referring to the water that stands at the southern most end of our property, which frankly did not exist five years ago. Certainly did not exist eight years ago when we purchased the house, and it did not exist as it is now five years ago. I can use that timeline with certainty because we put a temporary metal fence around our property and part of our abutter’s property when all water and all cattails stood behind the fence. So if you look at the Gove report that is included in our packet, it shows both

delineations, the previous delineation and the current delineation. By measurement, the wetlands line has moved 100 feet in the northwest direction, and 53 feet in the northeast direction, encroaching on our property and our abutter's property, which is actually fully the reason why we are even in the buffer zone for this project. So that is a significant concern to us. We now have our shed in standing water, the water encroaching on our pool, which is why at the last meeting, the location of the pool was a question. Back in November, the abutter who by all accounts by city officials and wetland scientists working with other projects on the block, it was action taken on the back lot of 14 Cedar, where burms were built up, and finally removed in November. We'll see what change in landscape happens now. The burms had been put in around 2007- 2008. We bought and moved in 2006. When the burms were completely constructed, I can't give you a specific date, but was between 2006 and 2008 our shed is rotting. The shed itself is not touching water, but is still rotting, being 15-20 years old. We have significant sink holes opening up on our property. We have small children, we have dogs. The encroachment of the water onto our property is significant. It is another issue. Hopefully, we'll see changes made by the city soon.

John Lopez: The property owner is well advised to note that the shed is in violation of the wetlands protection act and the local ordinance in that it is located within a protected resource, a wetland. The pool, because it is located in a wetland, is inappropriately placed. Also there is a deck on the back of the house which was permitted by the building department, but the property owner at the time, because it was jurisdictional to the wetlands 100 foot buffer, the property owner never got it permitted through the wetlands process. That was a long time ago. Also, the proposed 4X6 drive, it says. Could you explain that?

Kinsey Boehl: 4X6, that is a portico. Looks like the drive is existing.

Lindsey Haight: Our front entry door is going to be moved out 4 feet.

John Lopez: My other comment was yes, we did talk about mitigation. Nothing was finalized. It was still left open. The applicant in an e-mail to me which you've been copied on, indicates that they would be willing to address that issue with the ConCom. Also, the storm water system, an infiltration system, there was an illustration provided in the packet, but I didn't see any reference to the installation of the infiltration system in your narrative.

Lindsey Haight: So I provided you with that illustration of the follow up in that same e-mail, dated 1-02-2015.

John Lopez: So is the infiltration system being proposed?

Lindsey Haight: That is what our contractor has planned as a standard dry bed at the base of each gutter.

John Lopez: But it wasn't included in your narrative, correct?

Lindsey Haight: No, that level of detail was not.

John Lopez: OK. So I think that the locations and the manner of instillation is fine, it's a good system and preferred, but it should be included in the revised plan and project narrative. The other issue is, I didn't see any proposed erosion control on the plan during construction. We need to have that documented... probably hay bails, but silk socks would be better. Invasive removal plan was discussed in Jan. but most of those now stand on the abutters property and the rest, before all the snow, were already in 6 inches of water, so removal is difficult to promise.

Kinsey Boehl: So can we conditionally approve pending the agents review and approval, or technically you can say you will submit it to the agent for review and approval for the ConCom. But if we can get a plan that talks about the infiltration system in detail, and erosion control, the other items we talked about are contingent on abutter properties and potentially pre-date the ordinance, I don't think we really have jurisdiction.

John Lopez: Regarding the infiltration system, physically, we need to know what it is and where it is. Is it a dry well, etc. The illustration is good, but show it on the plan and defer this to your consultant who is going to install it, have him draft a narrative as to how he is going to install it. By hand? Front end loader? How long will it take? Because when it is approved, that will be approved as part of the plan...along with the siltation indication on the plan, those are really the only two items we need, on the plan, erosion control during construction.

So, if ConCom wants to continue this, then the applicant would have to submit this by the deadline. If the ConCom wants to conditionally approve it, then the wording would be that these documents would be submitted to the agent by a date certain for review and approval, or approval as modified.

Kinsey Boehl: I'm personally leaning towards a contingency approval. This has gone on long enough.

Motion was made by Michael Bik for NOI 002-1112 for 2 Pine Street in sending documents to John Lopez regarding the infiltration system, silt fencing to be conditionally approved, and in the unlikely event that water is encountered during the excavation of the structure, to have the applicant provide some sort of a de-watering plan, and your contractor can do that...so a de-watering plan. The motion was seconded by Alan Corey. AIF.

Motion to close the hearing. Motion was seconded by Alan Corey. AIF.

ANRAD – 219 Lions mouth Road / Woodsom Farm (Desmarais)

John Lopez: This is a city proposed project submitted by Robert Desmarais, DPW director: This is for the Office of Community and Economic Development to have a better assessment as to the resources at Woodsom Farm and their delineation and associated buffer zones. The city Director of Comm. And Econ. Dev. Retained the services of BSC and Jillian Davies, who was selected because I recommended her as being the preferred consultant of the ConCom. She conducted a delineation of a portion of Woodsom Farm over by the soccer fields. This delineation was conducted in December. This was predominantly a soils based delineation on an existing lawn, much like a soccer field, over a large area but simple and straight forward. I think it is very accurate, so I recommend that ConCom approve the delineation through the issuance of an Order of Resource Area Delineation.

Kinsey Boehl: So we'd be approving the ANRAD and issuing an Order.

John Lopez: Correct. This would allow the city to know where the protected resources and their associated buffer zones are.

Motion was made by Michael Bik to approve the ANRAD for 219 Lions Mouth Road and issue an Order of Resource Area Delineation approving the line as indicated in the ANRAD. Motion was seconded by Alan Corey. AIF.

A P P R O V E D on April 6, 2015

Motion to adjourn the meeting was made by Michael Bik. Motion was seconded by Alan Corey. AIF.

Meeting was adjourned at 9:35P.M.